IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION.

TALLAHASSEE CIVIL ACTION No. 851.

POLAR ICE CREAM & CREAMERY COMPANY,
Plaintiff,

versus

CHARLES O. ANDREWS, JR., Chairman, ALEX SHAW, JACKSON LOGAN, ROBERT G. CARTER, MRS. CHARLOTTE TOMLINSON, JOHN H. CONE and DR. JAMES ACREE, as and constituting the FLORIDA MILK COMMISSION, and FLORIDA MILK COMMISSION, an instrumentality of the State of Florida,
Defendants.

ORDER.

In accordance with opinion and findings of fact and conclusions of law heretofore filed this day, and the Court having determined that plaintiff is not entitled to relief sought in this litigation, it is, therefore, upon consideration, hereby

ORDERED, ADJUDGED AND DECREED:

1. That plaintiff is entitled to no relief and that all previous orders restraining the defendant, Florida Milk Commission, in this cause be and the same are dissolved.

2. The costs of this action may be taxed upon the plaintiff in accordance with the law and the rules of the United States District Court for the Northern District of Florida.

DONE AND ORDERED this 26th day of July, 1962.

(S.) WARREN L. JONES,
United States Circuit Judge,

(S.) DOZIER A. DeVANE,
United States District Judge,

(S.) G. HARROLD CARSWELL,
United States District Judge.

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Defendants.

OPINION AND FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Before JONES, Circuit Judge, and DeVANE and CARSWELL, District Judges.

CARSWELL, District Judge:

Jurisdiction in this cause is predicated upon an averment of a constitutional question and jurisdictional amount. Plaintiff is a Florida corporation located in Pensacola, Florida, and engaged in the distribution of milk and milk products. Defendant is the Florida Milk Commission, an agency of the State of Florida.

The Pensacola Milk Marketing Area came under the control of the defendant on November 21, 1961, after

a favorable vote by the producers and producer-distributors of that area as prescribed by Section 501.20, Florida Statutes. Thereafter, the defendant passed a number of orders having to do with the classification of milk, minimum prices for the sale of milk, base percentages for producers, and other administrative details for fixing and maintaining a fixed price for milk.

Testimony was taken and arguments heard with reference to the following issues:

1. Whether Chapter 501, Florida Statutes, and the regulations and orders of defendant, as applied to milk delivered by plaintiff to military reservations, are unconstitutional.

2. Whether the provisions of Chapter 501, Florida Statutes, and the regulations and orders of the defendant, as applied to plaintiff, impose an undue burden upon interstate commerce, and are therefore unconstitutional.

3. Whether the provisions of Chapter 501, Florida Statutes, and the regulations and orders of the defendant, as applied to plaintiff, violate his constitutional rights of freedom of contract, due process, and equal protection of the law.

These issues are taken in order.

1. Plaintiff makes several allegations concerning the application of Chapter 501, Florida Statutes, and

defendants' regulations and orders to "military milk" (milk delivered to United States military installations). Plaintiff first attempted to show that the regulatory fee imposed on milk distributed by plaintiff to military installations is a tax imposed by the State of Florida, and, therefore, violates the supremacy clause (Article I, Section 8, Clause 17) of the United States Constitution. However, the finding of this Court is that the fifteen-one hundredths (15/100ths) of one cent per gallon imposed by the defendant is not a revenue raising device. It is in the nature of a regulatory fee based upon the privilege of doing business in the State of Florida, and not a tax upon milk.[1] Due to the above finding and the absence of any showing on this record that the amount of the fee imposes an undue burden upon interstate commerce, we conclude that the imposition of the fee upon the plaintiff is proper, even though plaintiff delivers milk to United States military installations.[2]

Plaintiff's second objection concerning "military milk" centers around the Federal Procurement Statutes.[3] Plaintiff attempted to show that the provisions of the regulations and orders of the defendant and the provisions of Chapter 501, Florida Statutes, violate the Federal Procurement Statutes, and are, therefore, invalid under Article VI, Section 2, of the United States Constitution. In support of this contention plaintiff

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[1] Chapter 501.09, Florida Statutes. 1956 Op. Atty. General of Florida 056-43, Feb. 16, 1956.

[2] Texas Co. v. Brown, 258 U.S. 466. Baldwin v. Seelig, 294 U.S. 511.

[3] Armed Forces Procurement Act of 1947. 62 Stats. 22, 10 U.S.C. §2301, et seq.

relies upon the case of *United States v. Paul*, 190 F. Supp. 645. This case is now pending in the United States Supreme Court. We cannot anticipate the total effect of the decision forthcoming from the Supreme Court; however, it appears to us that the *Paul* case does not present a comparable situation. In *Paul* the Court concluded that:

> "(T)he California Milk Stabilization Act places a prohibition on the Federal Government within the meaning of the Public Utilities Case (Public Utilities Commission v. United States, (1958) 355 U.S. 534), and therefore so conflicts with the Federal Procurement Statutes and policy as to be invalid under the supremacy clause, Article VI, Section 2."

The distinguishing factor between the *Paul* case and the case at bar is that in *Paul* there was a direct imposition by the state statute upon the Federal Government acting in its capacity of a consumer, by setting a minimum price for the sale of milk and imposing penalties on the seller *and* the consumer for its failure to maintain this minimum price. There is no showing here of any restriction placed upon the price paid by the Federal Government for milk purchased for military installations. Indeed, there is no proof of any restriction upon plaintiff from selling milk to military installations at any price agreeable to plaintiff and its customer, regardless of whether the military installation is located in the State of Florida or any other state. Further, there is no proof of any

limitation imposed on the price that a customer must pay the plaintiff, be the customer military or civilian. For the above reasons the Court is of the opinion that the regulations, orders, and provisions of Chapter 501, Florida Statutes, as applied to plaintiff under the facts in this case, do not violate the Federal Procurement Statutes.

2. Plaintiff contends that the provisions of Chapter 501, Florida Statutes, as applied to him, place an undue burden upon interstate commerce. Plaintiff sought to prove that the "base plan" as set up by the statutes, and the orders and regulations of defendant discriminate against out-of-state producers, and therefore, restricts interstate commerce. Plaintiff further contends that the base plan, or base formula, as set up by the defendants' regulations requiring plaintiff to purchase all the milk supplied by his producers operates as a restraint of trade in interstate commerce. This is so, it is urged, because after purchasing locally produced milk at sixty-one cents (61¢) per gallon plaintiff has reduced his financial ability to purchase out-of-state milk at a lower price with the practical result of the regulation preventing him from buying and selling out-of-state milk on a free market.

While it may be true that the purpose of the Florida Statute is to assist and protect Florida milk producers, this does not necessarily make the statutes unconstitutional. It must be shown that alleged discrimination against out-of-state producers is a burden upon inter-

state commerce or actually restricts interstate commerce.[4]

Plaintiff relies most heavily upon the case *Baldwin v. Seelig*, 294 U.S. 511, for the proposition that Florida Statute Section 501.13(8) is unconstitutional as a restraint on interstate commerce. In that case the plaintiff, Seelig, Inc., a New York milk distributor, purchased milk in Vermont at a lower price than required by New York statute. Ninety percent of the milk was sold to customers in the original cans, and ten percent was removed from the cans, bottled and sold to customers in New York City. The New York statute (which is identical to F.S. 501.13(8)) provided that there should be no sale within New York of milk purchased outside New York unless the price paid to the out-of-state producer was one that would be lawful in a like transaction within the State of New York. The Court restrained enforcement of the Act insofar as sales made by Seelig while the milk was in the original cans or packages, but refused to grant an injunction as to milk removed from the original cans and thereafter sold in bottles. The United States Supreme Court upheld the action of the Trial Court in restraining the enforcement of the Act as to the milk in original packages and further held that it should have granted the final decree as to the rebottled milk also, since New York had no power to regulate the prices of milk in Vermont, and held that New York could not prevent the introduction of Vermont milk of wholesome quality into New York. The Court stated that New York's

[4] Milk Control Board v. Eisenberg Co., 306 U.S. 346.

refusal to allow the sale of milk purchased at a lower price in Vermont amounted to a barrier to traffic between one state and another as effective as a custom duty.

The facts here adduced simply do not reflect a comparable state of affairs concerning this plaintiff and the Florida Milk Commission. There is no such application of the statute in this case.

It is a settled principle that the Court has authority to determine whether a statute enacted by a state legislature is or is not constitutional. However, in order to justify a pronouncement that a legislative act is unconstitutional the case must be so clear as to be free from doubt.[5] While courts will pass on the validity of statutes when such a determination is necessarily involved, unnecessary decisions will be avoided,[6] and courts will not assume to pass on constitutional questions unless properly before them.[7] The constitutionality of a statute will not be considered and determined by the courts as a hypothetical question,[8] and this is what the plaintiff would have us do. In *Baldwin* the court found that the State of New York was attempting to regulate the price of milk in the State of Vermont. No such situation exists in the present case. Neither the regulations and orders of the defendant nor the proof presented by the plaintiff upon trial in this action show that the plaintiff is restricted from

[5] Powell v. Pennsylvania, 127 U.S. 678.
[6] Crowell v. Benson, 285 U.S. 22.
[7] Champlin Ref. Co. v. Corporation Comm., 286 U.S. 210.
[8] Anniston Mfg. Co. v. Davis, 301 U.S. 337.

selling milk to consumers at any price agreeable to him and his customer. The defendant does not attempt to regulate the price that the plaintiff pays his out-of-state producers, nor do the regulations restrict plaintiff from purchasing out-of-state milk in any amount or for any price. This contention is without merit.

3. Plaintiff complains, finally, that Chapter 501, Florida Statutes, and the regulations and orders of the defendant deprive it of its liberty of contract and property without due process of law, and deny him equal protection of the law. The rationale of plaintiff on the undisputed facts is to the effect that:

a. Plaintiff is required to take all milk tendered by its Florida producers at fixed prices and is given no assurance of any rate of return. Therefore, the regulatory scheme of the defendant is one-sided and results in violation of due process, and denies equal protection of the law.

b. The statutory and commission imposed restrictions and requirements deprive the plaintiff of its liberty of contract in that it is ordered to take all milk of its Florida producers, and is forced into contractual relationship created solely by the defendant, and plaintiff is not free to terminate this relationship except by showing just cause acceptable to the defendant commission.

The liberty of contract is the freedom from arbitrary restraint not immunity from reasonable regulations

imposed in the interest of the community.[9] It is a well settled rule that the state may lawfully impose such restrictions in the exercise of its police power.[10]

The principle of due process of law has been said to secure the citizen against any arbitrary deprivation of his rights,[11] and is a limitation upon arbitrary power and a guaranty against arbitrary legislation.[12] However, the states are not deprived of the power to regulate for the public welfare, but merely required to insure that the end be accomplished by methods consistent with due process.[13]

Equal protection of the laws like due process is perhaps not capable of precision in its multifold applications, however, the guiding principle is often stated as requiring that all persons be treated alike under like circumstances and conditions.[14] Control over the business of producing or dealing in milk products is acknowledged to be within the police power of the state, and price regulations in that industry have been upheld in a number of decisions as not violating the constitutional right of equal protection of the law.[15]

From the above it is apparent that the real issue to be determined is whether or not the regulations and orders of the defendant and the provisions of Chapter

[9] West Coast Hotel Co. v. Parrish, 300 U.S. 379.
[10] Id.
[11] Jones v. Brim, 165 U.S. 180.
[12] Nebbia v. New York, 291 U.S. 502.
[13] Id.
[14] Hartford v. Steam Boiler Inspection & Insurance Co., 301 U.S. 459.
[15] Nebbia v. New York, 291 U.S. 502.

501, Florida Statutes, as applied to plaintiff are a valid exercise of the State's police power. The Florida Supreme Court has on at least two occasions expounded on this question and upheld the statute.[16] We agree with that Court's statement in *Shiver v. Lee*, at page 321:

> "We have never found a stronger finding of fact and statement of policy as the basis for regulating and administering a great industry than that embodied in the two paragraphs preceding this for control of the milk industry. Chapter 19231, Acts of 1939, from which Chapter 501, Acts of 1953, was in the main drawn, was a complete departure from the previous milk control acts, in that it recognized the necessity for continuous control and supervision of the milk industry. One cannot read the findings of fact and statement of policy without being convinced that the paramount purpose of the legislature was to invoke the police power for protection of the public health, safety and welfare as well as the welfare of those engaged in the milk industry. Every legislature since said Act was passed has amended and strengthened it and the 1955 legislature refused to repeal or modify it."

and at page 323:

> "A casual reading of the legislative findings shows that the milk industry had through devious means become a sick business, that an adequate supply of fresh, wholesome milk for

[16] Shiver v. Lee, 89 So. 2d 318. Borden Co. v. Odham, 121 So. 2d 625.

> the public had become imperiled and that it was necessary for the protection of the public, the consumer and producer to impose rigid restrictions and price fixing. It would be difficult to point out a more convincing case for legislative intervention. . . ."

We find from the evidence adduced at the trial that the plaintiff has failed to sustain the burden of proof that there has been an illegal application of this power of the Milk Commission upon this plaintiff. It is elementary, but perhaps worth repeating, that such power may be unlawfully applied in another instance, but in all instances the proof must be made.

It is the duty of the court to sustain police measures unless it is clearly, plainly and palpably in violation of the Constitution.[17] An earnest conflict of serious opinion does not suffice to bring such an act within the range of judicial cognizance.[18] At best plaintiff's contentions are an earnest conflict of serious opinion, and the proof offered to sustain these contentions is quite insufficient to warrant the relief sought, and judgment is accordingly entered by appropriate order for the defendant.

The foregoing is adopted by this Court as findings of fact and conclusions of law.

Dated this 26th of July 1962.

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[17] Euclid v. Ambler Realty Co., 272 U.S. 365.
[18] Erie RR Co. v. Williams, 233 U.S. 685.

[2220]

CHAPTER 501

MILK COMMISSION

501.01 Legislative finding; statement of policy.
501.02 Definitions of terms used in chapter.
501.03 Milk commission.
501.04 Powers of milk commission.
501.05 Rules and orders of milk commission.
501.051 Official actions of commission, place for transaction.
501.06 Investigations by commission.
501.07 Entry on and inspection of premises where milk is sold, etc.
501.08 Injunction to restrain violation.
501.09 Issuance, revocation, etc., of licenses to milk dealers.
501.10 Records of licensees.
501.11 Reports by licensees.
501.13 Order by commission fixing price of milk.
501.14 Collective sales by cooperative corporations.
501.15 Interstate and federal compacts.
501.16 Audits and reports to governor and legislature.
501.17 Divulging of information by commission members, etc., forbidden; penalty.
501.18 Law declared not applicable to interstate commerce.
501.19 Owner of three cows or less exempt.
501.20 Exercise and withdrawal of exercise of supervisory and regulatory powers in markets.
501.21 Duration of commission.
501.23 Penalty for violations.

501.01 Legislative finding; statement of policy.—This chapter is enacted in the exercise of the police power of the state, and its purpose generally is to protect the

public health, safety and welfare. It is declared that the production and distribution of milk, cream and other milk products in the state is an industry upon which to a large degree, the prosperity and health of the people of the state depend, and that the present economic emergency is in part a result of the disparity between the prices of milk, cream and milk products and other commodities, which disparity has diminished the power of milk producers to purchase industrial products, and has broken down the orderly production and marketing of milk, cream and other milk products, and has seriously impaired the agricultural assets supporting the credit structure of the state and political subdivisions thereof; that unhealthful, unfair, unjust, destructive, demoralizing and uneconomic trade practices have grown up and have been carried on in the production, sale and distribution of milk, cream and milk products in this state which impair dairy industry in this state and imperil the constant supply of pure and wholesome milk to the inhabitants thereof, and constitute a menace to the health and welfare of the inhabitants of this state; that such conditions existed at the time of the creation of the milk control board and constituted a menace to the health welfare and reasonable comfort of the inhabitants of this state, and will again constitute such menace should all regulations as set forth in said law creating said board go out of existence. In order, therefore, to protect the well-being of our citizens, and to promote the public welfare, and in order to preserve the strength and vigor of the race, the production, transportation, manufacture, storage, distribution and sale of milk, cream and milk products in the state is declared to be a business affecting the public health and interest of its citizens; and the production, transportation, manufacture, storage, distribution and sale of milk, cream and milk products to be a paramount industry upon which the prosperity of the

state and the welfare of its citizens in a large measure depends. In order to correct abuses arising from the destructive and unfair manipulation of prices which are found to spring from a selfish disregard of the public interest in the manner of carrying on the dairy industry, which is an organized industry, it is found necessary to resort to the legislative remedy of regulating prices to save both producers and consumers from such manipulation of prices in the industry; because such practices amount to evils which menace the health, safety, and welfare of the people at large, this chapter is passed. It is further found that the acute economic emergency which existed at the time of the creation of the milk control board was partly the consequence of a severe and increasing disparity between the prices of milk and other commodities, as aforesaid stated; that such practices were and are curtailed by the existence of said board, but will immediately recur should said board and the regulations set up to be administered thereby pass out of existence; that the purchasing power of milk producers is in imminent danger of again being broken down and demoralized; that the danger to the public health and welfare is immediate and impending, the necessity urgent and such as will not admit of interruption in public supervision and control in accord with proper standards of production, sanitation and marketing; that it is therefore necessary that said business be supervised and regulated by proper legislation. The foregoing statement of fact, policy and application of this chapter are declared as a matter of legislative finding and determination.

501.02 Definitions of terms used in chapter.—As used in this chapter, unless otherwise expressly stated, or unless the context or subject-matter otherwise requires:

"Administrator" means the administrator for the milk commission.

"Commission" means the state agency created by this chapter, to be known as the milk commission.

"Person" means any person, firm, corporation or association, and includes the members of partnerships, the officers of corporations and the members of associations.

[2221] "Milk dealer" means any person who purchases or handles milk within the state, for sale in this state, or sells milk within the state in any market as defined in this chapter. Each corporation which if a natural person would be a milk dealer within the meaning of this chapter, and any subsidiary of such corporation, shall be deemed a milk dealer within the meaning of this definition. A producer who delivers milk only to a milk dealer shall not be deemed a milk dealer.

"Dairy farmer" means a person producing milk within the state.

"Producer" means a person producing milk within the state and where the term dairy farmer or producer is used in this chapter or in any other laws referring to the powers and duties of the Florida milk commission the two terms shall be construed to mean one and the same; provided, however, that persons appointed to the milk commission as "dairy farmers" cannot also be distributors of milk.

"Distributor" means any milk dealer who operates a milk gathering station or processing plant where milk is collected and bottled or otherwise processed and prepared for sale.

"Producer-distributor" means a distributor as herein defined who is also a producer as herein defined, pro-

ducing at least seventy-five per cent of the milk he processes and prepares for sale.

"Consumer" means any person other than a milk dealer who purchases milk for fluid consumption.

"Bob tail" means any person distributing milk at retail or wholesale who does not process or bottle the milk products he distributes or sells, and for the purpose of this chapter is classified and termed a distributor as defined herein and is subject to all the terms and provisions of this chapter applicable to a distributor, including the payment of all license fees or charges by this chapter imposed.

"Store" means a grocery store, hotel, restaurant, hospital, orphanage, soda fountain, dairy products store or other establishment where milk, cream or milk products are kept or offered for sale.

"Milk" means liquid milk and cream, fresh, sour, or storage, and condensed or concentrated whole milk, except when contained in hermetically-sealed cans, originally obtained from the complete milking of one or more healthy cows. In each instance where quantity is referred to, the intent is to include its whole milk equivalent.

"Market" means any city, town or village of the state, or two or more cities, towns or villages and surrounding territory designated by the commission as a natural marketing area containing not less than one thousand population in such designated area.

"Licensee" means any and all persons who are required to obtain a license or permit as required by this chapter.

501.03 Milk commission.—There shall be a milk commission which shall be composed of:

(1) Three citizens not connected with the milk industry other than as consumers of milk who are citizens of the United States and residents of the state for a period of not less than ten years immediately preceding the date of their appointment.

(2) The state health officer, or some employee of the state board of health, and the commissioner of agriculture or some employee of the department of agriculture.

(3) A dairy farmer as defined in this chapter.

(4) One distributor or producer-distributor of milk as defined in this chapter.

The members of the commission shall receive per diem as provided by general law, fractions of day to be computed accordingly, and their legal traveling expenses when actually engaged on the business of the commission; and the members of the commission shall receive the sum of ten dollars per day for attendance at board meetings of the commission. The expenditures of the commission shall not exceed the revenue collected under this chapter. The members of the commission and the administrator hereinafter provided for shall be appointed by the governor of the state and shall serve for a term of four years or until their successors are appointed and qualified.

Provided, that in order to insure rotation in office, the first members named hereunder shall be appoin' for the following terms of office:

One member engaged in the business of producer as described herein shall be appointed for a term of four years.

One member engaged in the distribution of milk as described herein shall be appointed for a term of three years.

Three members, citizens not connected with the milk industry other than as a consumer of milk products, shall be appointed for a term of three years.

That in addition to the members of the commission there shall be an administrator of the commission (without voting powers) who shall be appointed by the governor of the state to serve for a term of four years or until his successor is appointed and qualified. The administrator shall receive compensation in such amount as is approved by the commission unless a different amount is provided in the general appropriations act, together with per diem and his legal traveling expenses when engaged on the business of the commission provided by §112.061.

Provided, however, that the present members of the commission shall hold office until their respective terms have expired.

The members of the commission and the administrator may be removed by the governor for cause as other appointive officers are removed in the state.

Technical, legal and other services for such commission shall be performed, so far as practicable, by forces or officers in the state board [2222] of health and the state department of agriculture without additional compensa-

tion, but the administrator with approval of the commission, shall appoint and at pleasure remove such additional technical, legal and other assistants and employees as may be necessary to carry out the provisions of this chapter, including an auditor not connected with the industry, prescribe their powers and duties and fix their compensation, who shall be paid from the funds collected under any of the provisions of this chapter. The milk administrator shall be the administrative head of the commission. Each member of the commission and the administrator of the commission shall execute and file with the comptroller a bond conditioned for the safe keeping and lawful application of moneys coming to the commission and under his control in such amount as may be approved by the comptroller. The milk administrator shall, subject to the limitation of this chapter, and of law, enforce the provisions of this chapter, but no official act shall be taken, rule or regulation promulgated or official order made or enforced, with respect to the provisions of this chapter, without the approval of a majority of the members of the commission. The principal office of the commission shall be in the city of Tallahassee, but offices in other localities may be maintained by the commission.

501.04 Powers of milk commission.—The milk commission is declared to be an instrumentality of the state for the purpose of attaining the ends recited in the legislative findings, and may:

(1) Supervise and regulate the entire milk industry of the state, including the production, transportation, manufacture, storage, distribution, delivery and sale of milk, cream and milk products, in any market established by the commission in the state; provided, however, that nothing contained in this chapter shall be construed to

abrogate or affect the status, force or operation of any provision of any law relating to public health or sanitation, the purity of food or food products, (the public health law, the public service law, the state sanitary code), milk products law, except as provided for in §501.09(4), state ice cream law, or any local health ordinance or regulation; and provided, further, that nothing in this chapter shall give the commission power to make rules or regulations prohibiting the giving away gratis of milk or milk products in cases of charity.

(2) Investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the state.

(3) Act as mediator or arbitrator in any controversial issue that may arise among or between milk producers, distributors and producer-distributors as between themselves or that may arise between them as groups. This provision is not mandatory and does not limit the rights of the parties to litigate any disputes or controversies among them arising.

(4) Institute and maintain such suits and actions as may be necessary to the enforcement of the rules and orders of the commission or any provisions of this chapter.

(5) Examine into the business, books, records, and accounts of any producer, distributor, producer-distributor, or milk dealer; issue subpoenas directed to said persons and require them to produce their records, books and accounts, and subpoena any other persons from whom information is desired.

(6) Take depositions of witnesses within or without the state.

(7) Any member of the commission, the administrator, or any employee designated by the commission, may administer oaths to witnesses and sign and issue subpoenas. The provisions of the civil law of the state in relation to enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized under the laws of the state to issue subpoenas in civil cases shall apply to a subpoena issued by the commission as authorized in this section and may be enforced in the manner herein provided.

(8) Prohibit the using, buying, purchasing, selling, offering for sale, disposal of, or trafficking in any milk or cream bottle, can or container, by any person, junk dealer or second hand dealer other than the owner or his duly authorized agent; a violation of this provision is expressly declared to be unlawful and to constitute a misdemeanor.

(a) When any milk or cream bottle, can or container shall have stamped thereon the name, trademark or design of some particular person the same shall be deemed prima facie evidence of ownership in the person whose name, trademark or design shall appear thereon.

(b) Possession by any person, junk dealer or second hand dealer other than the owner or his duly authorized agent, of any milk or cream bottle, can or container bearing the name, trade-mark or design of such owner shall be deemed prima facie evidence of violating the provisions of this chapter, unless such person, junk dealer or second hand dealer shall have

been the purchaser of the contents of the said milk or cream bottle, can or container, or shall have exchanged one of his own milk or cream bottles in due course of distribution of milk to his trade.

(c) Upon application to the commission by any person whose name, trade-mark or design is affixed to any milk or cream bottle, can or container, who is the owner thereof, stating under oath that the same is in possession of some other person than the owner, after its contents have been consumed, and that such person refuses to deliver possession thereof to the owner after demand except upon claim or ownership, the commission shall issue a rule to show cause directed to such person requiring such person, within five days after service upon him, to show cause why delivery and possession should not be given to the rightful owner. [2223] The commission upon hearing the testimony offered by the parties shall determine the right of possession thereof in a summary manner and enter an order according to the justice of the cause. Any person who violates the turn-over order entered by the commission after a full hearing, shall be subject to punishment for contempt, and the commission shall forthwith report such action to the county judge of the county in which such hearing is held, and the county judge upon an affidavit filed reasonably establishing any such or other offense shall punish such person guilty thereunder, after rule to show cause, in the same manner as a[illegible]her contempt may be punished by said judge in any [illegible]ceeding over which the county judge may lawfully preside. Upon being adjudged in contempt by the county judge, such person shall be punished by fine not to exceed fifty dollars, or imprisonment not to exceed sixty days. All rights for relief under the laws of the state in con-

tempt proceedings shall be applicable to persons affected by this provision.

(9) Make, adopt and enforce all rules, regulations and orders necessary to carry out the purpose of this chapter; hold hearings after reasonable notice thereof has been given; receive sworn testimony and evidence at hearings as to the reasonableness of any order, rule or regulation of the commission; reasonably classify and establish definite market areas, and provide different rules, regulations and charges therefor; establish health and sanitary requirements. The commission after public hearing and investigation may fix the prices to be paid producers by distributors, milk dealers or producer-distributors in any market or markets; may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may also fix different prices for different grades of milk; may establish the grades of milk; may establish reasonable rules and regulations for fair competition, and fix reasonable rules and regulations for the conduct of the commission's business and for the regulation of its employees; may require reasonable examinations of license applicants to test their general fitness to engage in any business defined in this chapter; may establish rules and regulations for hearings in keeping with the procedure herein authorized; may revoke, suspend or refuse to issue the license of any person hereunder for the violation of any rule, regulation or order of the commission, after due notice and a fair hearing as herein provided; may provide for the collection of license fees authorized by this chapter, and may regulate all matters reasonably incidental to the general or specific powers herein recited; may provide for deputy administrators in any market area created by the commission, with such authority as may

be designated by the commission, including the power to investigate complaints, report violations of the commission's orders, and to have such other powers reasonable or incidental thereto, including the right to administer oaths, make investigations, conduct hearings when ordered by the commission, and on due notice to take testimony in connection with investigations of complaints, and to cause the same to be stenographically transcribed and reported and transmitted to the commission for final action thereon, together with such other authority as the commission may designate in keeping with the general powers and purposes created under this chapter.

(10) The commission may designate and use a legal seal and formulate and determine the wording and form thereof; such seal may be affixed by the chairman or secretary of the commission, or its administrator, to all original legal orders of the commission and to any and all legally certified copies of orders or records of said commission.

(11) The operation and effect of any provision of this chapter conferring a general power upon the commission shall not be impaired or qualified by the granting to the commission by this chapter of a specific power or powers.

(12) The Florida milk commission is hereby expressly prohibited from fixing the price of milk sold and delivered to lunch rooms of the public schools of Florida for consumption by students therein, and to all charitable organizations of a public or semi-public nature who buy milk for free distribution to the needy.

501.05 Rules and orders of milk commission.—

(1) The commission shall adopt and enforce all rules and orders necessary to carry out the provisions of this chapter, and may formulate procedures and regulations whereby the commission may through the services of the administrator and its various area deputies render all possible assistance to milk distributors and dairy farmers in ascertaining current milk supply needs in all areas of the state and in securing the cooperation of distributors and dairy farmers in the transfer of milk not needed for class 1 purposes from one distributor to another and from one area to another, in order that the consumer may be assured of a more adequate supply of fresh wholesome milk at all times and the dairy farmer may receive the best market classification possible for the milk which he produces. It shall be the duty of the deputy administrators and all licensees to cooperate with the commission in carrying out the provisions of this subsection.

(2) Every rule or order of the commission shall be posted for public inspection in the main office of the commission and a certified copy filed in the office of the secretary of state. Copies of all orders and records of the commission authenticated by the signature of the administrator shall for all purposes be deemed to be certified copies. An order applying only to [2224] person or persons named therein shall be served on the person or persons affected. An order required to be served shall be served by personal delivery of a certified copy or by mailing a certified copy in a sealed envelope with postage prepaid to each person affected thereby, or, in the case of a corporation, to any officer or agent of the corporation

upon whom a summons may be served in accordance with the provisions of the laws of the state. The posting in the main office of the commission of any rule, and of any order not herein required to be served, and such filing in the office of the secretary of state, shall constitute due and sufficient notice to all persons affected by such rule or order. A rule of the commission when duly posted and filed as provided in this section shall have the force and effect of law. The provisions of this section as to service of orders shall not apply to orders fixing prices of milk as to which provision is made in §501.13.

(3) The relationship between a producer and a distributor, under which milk produced by the producer is regularly delivered to and accepted by the distributor, when once established, shall not be terminated either by the producer or by the distributor without just cause therefor, and the approval of the commission. Just cause will be considered by the commission as any cause deemed just by a prudent and reasonable man.

Arbitrary, capricious and vindictive reasons will not be considered as just cause for any such termination.

(4) The commission shall set a standard date as the date from which not less than ninety days written notice in writing and in advance must be given by the producer or the distributor involved to the other before any such theretofore established relationship may be terminated; unless such notice is given, such relationship will not be terminated, even though just cause exists for termination, unless just cause exists excusing the failure to give such notice.

501.051 Official actions of commission, place for transaction.—The commission is hereby expressly authorized and empowered to hold meetings at any place in the state, and at any such meeting to make, adopt and promulgate all lawful rules, regulations, resolutions and orders, and take all lawful action. Any such rule, regulation, resolution or order made, adopted or promulgated, or any such action taken, pursuant to or based upon, in whole or in part, a public hearing, shall be valid and enforceable whether or not such public hearing was also held at the place where such rule, regulation or order was made, adopted or promulgated, or such action is taken. All rules, regulations, resolutions and orders made, adopted or promulgated, and all action taken by the commission, at meetings held at places other than Tallahassee shall have the same full force and effect as such rules, regulations, resolutions and orders made, adopted and promulgated, and action taken at meetings held in the city of Tallahassee.

501.06 Investigations by commissions.—The practice and procedure of the commission with respect to any investigation by the commission authorized by this chapter shall be in accordance with rules and regulations to be promulgated by the commission which shall provide for a reasonable notice to all persons affected by orders to be made by the commission after such investigation, opportunity to be heard either in person or by counsel, and to introduce testimony in their behalf at a public hearing to be held for that purpose. For the purpose of such investigation or any hearing which the commission is authorized or required to conduct, the commission, any member thereof, administrator, or deputy administrator, may conduct such hearing, administer oaths, take depositions, issue subpoenas, compel the attendance of wit-

nesses and the production of books, accounts, papers, records, documents and testimony. In case of disobedience of any person to comply with the order of the commission or a subpoena issued by any person herein authorized to issue same, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the county judge of the county in which the person resides, on application of any member of the commission, the administrator, or deputy administrator shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. Each public officer who serves such subpoena shall receive the same fee as a sheriff and each witness who appears in obedience to a subpoena before the commission, any member thereof, the administrator, or deputy administrator, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in circuit courts of this state, which shall be audited and paid as other expenses are audited and paid, upon the presentation of proper vouchers, approved by the commission. No witness subpoenaed at the instance of a party other than those herein authorized to issue subpoenas shall be entitled to compensation from the commission unless the commission shall certify that his testimony was material to the matter investigated.

501.07 Entry on and inspection of premises where milk is sold, etc.—Any member of the commission, the administrator, deputy administrator, or an employee designated for the purpose, shall have access to and may enter at all reasonable hours all places where milk is being sold, offered for sale, stored, bottled or manufactured into food products, in any market, established by the commission, and may inspect all books, papers, records or documents in any place within the state for the purpose

[2225] of ascertaining facts to enable the commission to administer this chapter.

501.08 Injunction to restrain violation.—The commission may institute such actions at law or in equity as may appear necessary to enforce compliance with any provision of this chapter, or to enforce compliance with any rule or order of the commission made pursuant to the provisions of this chapter, and in addition to any other remedy herein provided may apply to any circuit court for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Said court may issue a temporary injunction, without notice, and no bond shall be required to be posted by the commission in any such action, it being an instrumentality of the state.

501.09 Issuance, revocation, etc., of licenses to milk dealers.—(1) No milk dealer shall buy milk from producers or others for sale within this state, or sell or distribute milk therein unless such dealer be duly licensed as provided in this section, and it is unlawful for a milk dealer to buy milk from or sell milk to a milk dealer who is unlicensed, or, in any way to deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this chapter.

(2) An application for a license to operate as a milk dealer shall be made on or before July first of each year, by mail or otherwise, to the commission upon blanks prepared under the authority of the commission. The application shall state the nature of the business to be conducted, the full name of the person applying for the license, and if the applicant be a firm, or association,

the full name of each member, and if a corporation the names and addresses of all officers and directors, and the city, town or village and the street number, if any at which the business is to be conducted; facts showing that the applicant has adequate technical personnel, adequate technical and physical facilities to properly conduct the business of receiving and handling milk; that he has complied with all rules and orders of the commission filed or served as required by this chapter, and such other facts with respect to the license or permit as may be required by the commission pursuant to this chapter. Such application shall be accompanied by the license fee required to be paid by this chapter. A license or permit shall be granted to the applicant by the commission, subject to the provisions of this chapter.

(3) The commission may decline to grant any license or permit required hereby or may suspend or revoke a license or permit already granted upon due notice and opportunity of hearing to the applicant, licensee or permittee, when satisfied of the existence of any of the following: The commission shall not in any event grant a license to any distributor who shall not before the issuance of such license produce to the commission a certificate from state, county or municipal health authorities, certifying that such distributor has complied with all health and sanitary laws, ordinances and regulations in effect in this state and in the city and county where any such distributor does business. When such health certificate is revoked, the commission shall immediately suspend the license of such distributor whose certificate was revoked until such time as such distributor shall obtain another certificate showing full compliance with such laws, ordinances and regulations; provided, however, that in localities where such certificates cannot be obtained because there is no law, ordinance or regula-

tion authorizing the issuance of such a certificate, a certificate by an inspector under the milk products law that such distributor has complied with the standards of the United States public health service standard milk ordinance, shall be accepted in lieu thereof.

(a) That a milk dealer has rejected, without reasonable cause, any milk delivered to and accepted by the milk dealer from a producer delivered by or on behalf of the producer in ordinary continuance of a previous course of dealing, or that a milk dealer has rejected without reasonable cause, or has rejected without reasonable advance notice, any milk tendered or offered for delivery to the milk dealer by or on behalf of a producer in ordinary continuance of a previous course of dealing. It is intended hereby to provide and require that a milk dealer shall not reject or refuse to accept any milk tendered or offered for delivery by or on behalf of a producer in ordinary continuance of a previous course of dealing unless there exists reasonable cause for the rejection or refusal to accept such milk and unless the milk dealer has also given such advance notice as may be reasonable under the circumstances of intention to reject or refuse to accept such milk.

(b) That the milk dealer has failed without reasonable cause to account and make payment for any milk purchased from a producer.

(c) That the milk dealer has committed any act injurious to the public health, public welfare, or to trade or commerce in demoralization of the price structure of pure milk to such an extent as to interfere with an ample supply thereof, for the inhabitants of the state affected by this chapter, which is declared to be injurious to the public health, public welfare and to trade

and commerce and evidence of a course of conduct on the part of the licensee tending to such demoralization shall be construed to be prima facie evidence of a violation of this section, proof of one act being sufficient to constitute a violation of this section.

(d) Where the milk dealer has made a general assignment for the benefit of creditors or has been adjudged a bankrupt or where a money judgment has been secured against him, [2226] upon which an execution has been returned wholly or partly unsatisfied.

(e) Where the milk dealer has continued in a course of dealing of such a nature as to satisfy the commission of his inability or unwillingness properly to conduct the business of receiving or selling milk.

(f) Where the milk dealer has continued in a course of dealing of such nature as to satisfy the commission of an intent to deceive or defraud producers or consumers.

(g) Where there has been a failure either to keep records or to furnish the statements or information required by the commission.

(h) Where it is shown that any statement upon which the license or permit was issued is or was false or misleading in any particular.

(i) Where the applicant is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which a license may be denied, suspended or revoked, pursuant to the provisions of this chapter.

(j) Where the licensee has violated any of the provisions of this chapter.

(k) The failure of any person to pay any license fee or other moneys required by the terms of this chapter when due shall constitute due cause for revocation of such person's license or permit.

In case of conduct by a licensee or permittee which would authorize the commission to suspend or revoke a license or permit, the licensee or permittee may propose to the commission the imposition of a fine in lieu of revocation or suspension, and the commission in its discretion may accept such offer and impose a fine. If such fine be promptly paid, revocation or suspension shall not be imposed, but if such fine be not promptly paid, the commission shall proceed to such revocation or suspension. Such fine, however, shall not be imposed unless the commission in its discretion determines that such fine would be adequate punishment and will probably procure future compliance with this law and the rules of the commission by such licensee or permittee; nor shall such fine be imposed unless the permittee or licensee shall in writing state to the commission his desire that a fine be imposed in lieu of revocation or suspension.

(4) No person shall engage in the business of distributing milk within any marketing area established by the commission, nor shall any person act as a distributor of milk within any such area, unless such person shall have obtained from the commission a license to act as a distributor of milk within such area.

On or before the first day of July in each year, all persons desiring to obtain licenses to act as distributors of milk in any marketing area shall file with the com-

mission at its office an application in writing for license, which application shall be upon a form to be prescribed by the commission and shall contain such information as the commission shall require including among other things, the name of the applicant, the address of his place of business, the period of time during which he has been distributing milk within the area, the approximate number of gallons of milk distributed by applicant during each of the twelve months preceding July first of the year in which application is filed, and the names and addresses of the producers from whom the applicant has purchased milk during the period of twelve months preceding July first of the year in which the application is filed. Each application shall be verified by the oath of the applicant or his agent, or, if the applicant be a corporation, by the oath of an officer of such corporation.

Upon the filing of the application and the payment by the applicant to the commission of the sum of five dollars which is fixed as a fee to cover the cost of receiving such application and issuing the license applied for, the commission shall issue or cause to be issued to the applicant a license in such form as the commission shall prescribe, which shall entitle the licensee to conduct the business of a distributor of milk until the first day of July next succeeding the date of the license, and which license shall be conditioned upon compliance by the licensee with all of the provisions of this chapter and all rules and regulations lawfully made pursuant to the provisions of this chapter.

If a person who was not engaged in the business of distributing milk in one of the marketing areas established by the commission on or before July first of any year shall desire to procure a license to engage in such busi-

ness, he shall file an application in the form aforesaid in like manner as other applicants are required to file the same and the commission may issue to such applicant a license for the unexpired portion of the year expiring on July first next succeeding the date of such license, but every such applicant shall pay to the commission the sum of five dollars to cover the cost of receiving such application and issuing such license.

Unless previously revoked in the manner provided by this chapter all licenses issued to distributors shall remain in force and effect until midnight of the first day of July next succeeding the date of the issuance thereof.

On or before the tenth day of each month each distributor shall make a report under oath to the commission upon such form and containing such information as the commission shall prescribe, but each report shall specifically, and in addition to all other information which may be required by the commission, contain and set forth:

(a) The number of gallons of milk produced; the number of gallons of milk received; and the number of gallons of milk distributed by such distributor during the preceding calendar month; and

(b) The name and address of each producer or any other person from whom the distributor purchased milk for distribution during the preceding calendar month and the quantity of [2227] milk purchased from each producer or other person, and the price per gallon paid to each producer or other person for milk so purchased, and the number of gallons purchased by such distributor if such distributor be also a producer.

For the privilege of continuing in or engaging in the business of distributing milk or acting as a distributor under the provisions of this chapter, there is imposed upon every distributor a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of milk distributed by each distributor during each calendar month. The amount of such tax shall be remitted by each distributor to the commission at the time that the monthly reports are required to be filed by the distributor with the commission as provided by this chapter.

Every person required to make a report and pay any tax upon the distribution of milk under this chapter shall keep and preserve suitable records of sales and distribution of milk and such other books of account as may be necessary to enable the commission at any time to determine the amount of tax due hereunder, and all books and records shall be open to examination at any time by the commission or any of its authorized agents or by the administrator.

The commission may prescribe rules and regulations for the collection of the license fees as provided and specified herein, and provide any and all necessary machinery for the prompt collection of any and all license fees assessed, and may take all such steps as are reasonably necessary and as authorized hereunder to prevent any person engaging in any business herein regulated without first taking out or paying the license fee prescribed, including the right to seek an injunction without notice or bond.

Any and all registration, license fees and other moneys required to be paid hereunder shall be paid to the commission and promptly receipted for by the administrator, and he shall be placed under such reasonable bond in

connection therewith, at the expense of said commission, as the governor of the state may require in order to furnish reasonable security in keeping with the total amount of such proceeds coming into his possession. All proceeds shall be promptly deposited in the state treasury into a separate trust fund to the credit of the commission. Such moneys are hereby appropriated for the administration of the provisions of this chapter unless the legislature provides otherwise in the biennial general appropriations act. All such appropriations shall be disbursed by the comptroller upon vouchers signed by the administrator and countersigned by the chairman of the commission.

Any person subject to the provisions of this chapter failing or refusing to furnish any return required to be made or failing or refusing to furnish a supplemental return or other data required by the commission or who shall violate any of the provisions of this chapter, including failure to secure a license or who shall violate any valid rule or regulation of the commission, or who shall secure a license upon false or fraudulent application, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding five hundred dollars or by imprisonment in the county jail for not exceeding six months and each offense and each day of violation shall constitute a separate offense.

Any person required to make, render, sign or verify any report as aforesaid, who makes or signs any false or fraudulent statement with intent to evade the tax hereby levied, shall be guilty of a misdemeanor and shall upon conviction be fined not less than $300.00 and not more than $1,000.00 or be imprisoned in the county jail for not exceeding one year.

If any licensee shall fail to pay the tax required to be paid within thirty days after the same shall become due, then there shall be added to said tax as a penalty for such failure an amount equal to two per cent of the amount thereof for each month or portion of a month during which such tax shall be delinquent, but this may be waived for cause by the commission.

All route salesmen, solicitors and each milk truck driver shall pay an annual license fee of one dollar.

Every distributor, producer-distributor and bob-tail distributor operating or using a truck, car or any vehicle, motor or otherwise, in the sale or delivery of milk products in connection with any regular retail route or wholesale route shall pay an annual license fee of five dollars for each truck, car or vehicle used for such purpose. This is in addition to other license fees or charges set forth, and application and payment therefor shall be made at the same time as other licenses; provided, however, that every bob-tail distributor or producer-distributor is allowed to operate one vehicle without payment of this license fee, but on all other vehicles so operated this license fee must be paid.

Each store shall before making sales or being permitted to purchase at wholesale from distributors, producer-distributors or bob-tails, obtain a permit from the commission, which permit shall be subject to revocation as herein provided for violation hereof as licenses may be revoked hereunder.

Every producer and producer-distributor within the state must secure from the commission an annual permit to engage in business. No charge shall be required therefor, but no producer or producer-distributor shall

engage in business within the state unless such permit be secured and continued in full force and effect. Same may be suspended or revoked for violation of any of the terms of this chapter or lawful rules or orders of the commission after due notice and hearing. Any person feeling aggrieved thereby may appeal to the circuit court as is provided herein for review of such order by the commission.

[2228] No payment of fees provided for in the milk products law, chapter 502 shall be required while this chapter is in full force and effect, but the said fees are expressly suspended for such period of time.

(5) The commission may classify licenses and may issue licenses to milk dealers to store, manufacture or sell milk limited to a particular city or village or to a particular market or markets in the state.

Any applicant, permittee, or licensee deeming himself aggrieved by any action of the commission taken under any of the provisions of this chapter may within thirty days after receipt of a copy of the order of the commission file a petition in error in the circuit court, which shall have jurisdiction to reverse, vacate, or modify the order complained of, if upon consideration of the record such court is of the opinion that such order was unlawful or unreasonable. The milk commission shall be the defendant in error and such petition in error shall set forth the errors complained of. Thereupon, unless summons shall be waived, summons shall be issued and be served upon the administrator, or in the event of his absence upon any member of the commission, or by leaving a copy at the office of the commission at the city of Tallahassee, with some employee thereof. Upon service or waiver of the summons, the commission shall forth-

with transmit to the clerk of the circuit court a transcript of the record of the commission and the original papers or transcript thereof, and a certified transcript of all evidence adduced upon the hearing before the commission in the proceedings complained of, which shall be filed in the court. No proceedings to reverse, vacate or modify a final order rendered by the commission shall operate to stay the execution or effect thereof unless the circuit court or a judge thereof on application and three days' notice to the commission, shall allow such stay, in which event the plaintiff in error shall be required to execute an undertaking payable to the milk commission in such a sum as the court may prescribe, with surety to be approved by the clerk of the circuit court, conditioned for the prompt payment by the plaintiff in error of all damages, expenses, costs and attorney's fees arising from or caused by the delay in the effectiveness or enforcement of the order complained of.

No court other than the circuit court may review, suspend or delay any order made by the commission with respect to the granting of a license or permit, refusal to grant a license or permit, the granting of a conditional and limited license, or the suspension or revocation of a license or permit, or enjoin, restrain, or interfere with the commission or any member thereof, in the performance of official duties with respect thereto. Nor shall the writ of mandamus be issued against the commission or any member thereof by any court other than the circuit court.

All rights of appeal from a decree in the circuit court, in chancery, shall exist and be preserved as in other cases.

(6) For the privilege of continuing in or engaging in the business of producing milk, or acting as a dairy farmer under the provisions of this law, there is hereby imposed upon every dairy farmer a tax in an amount equal to fifteen-one hundredths of one cent upon each gallon of class 1 milk produced, as defined by the commission, by each such dairy farmer, and delivered to the platform of the distributor or producer-distributor during each calendar month. The amount of such tax shall be deducted by the distributor and the producer-distributor from the moneys due to the dairy farmer, and by such distributor or producer-distributor remitted to the commission at the time that the monthly reports are required to be filed by the distributors or producer-distributors with the commission, as provided by this chapter, and in the event the dairy farmer acts as his own distributor he shall remit the said tax to the commission at the time that the monthly reports are required to be filed by the distributor and producer-distributor with the commission, as provided by this chapter.

(7) The commission may, in issuing a permit to a store after the effective date of this act, provide on it the period of time for which it is effective. Unless the commission, in issuing any such permit, expressly provides upon it the period of time for which it is effective, such permit when issued shall be effective until the store to which it is issued ceases to operate, provided, however, such permit may always be suspended or revoked, as provided herein. All permits now issued to stores shall be effective until the store to which it is issued ceases to operate, provided, however, any such permit may always be suspended or revoked, as provided herein.

(8) A store holding or obtaining a license issued by the hotel and restaurant commission under chapter 509 shall be deemed, for all purposes of this chapter, to hold the permit required of stores under this chapter, and shall not be required to obtain a permit also from this commission, provided, however, the commission may decline to grant, or suspend or revoke, such license as a permit under this chapter for the same reasons or causes and as fully and to the same extent as it may other permits to stores provided for by this chapter.

No store required to hold a license under chapter 509, shall make any sales of milk, or any purchases thereof at wholesale, during any period of time in which it does not hold such license from, or during which such license has been suspended or revoked by, the hotel and restaurant commission.

If at any time during a fiscal year the revenues received by the commission under this chapter exceed by at least twenty-five per cent the total amount of expenditures as budgeted by the commission for that fiscal year, the payment of taxes provided for in this subsection, [2229] and in §501.09(4), on milk distributed by distributors, will be discontinued and such taxes are not imposed for the calendar months remaining in that fiscal year commencing with the first calendar month following the time when such revenues so collected exceed by at least twenty-five per cent the total amount of expenditures so budgeted for that fiscal year. All such taxes are imposed and shall be paid for each calendar month of each fiscal year through and including the month preceding the month in which any such discontinuance provided for herein becomes effective, and those liable for their payment shall continue to be liable therefor, regard-

less whether such taxes, and any penalties for late payments, are paid before or after the time of any such discontinuance.

501.10 Records of licensees.—The commission may require licensees and permittees to keep the following records:

(1) A record of all milk received, detailed as to location and as to names and addresses of suppliers, with butter fat tests, prices paid, deductions or charges made.

(2) A record of all milk sold classified as to grade, location and market outlet and size and style of container, with prices and amounts received therefor.

(3) A record of quantities and prices of milk sold.

(4) A record of the quantity of each milk product manufactured and quantity of milk or cream used in the manufacture of each product, also the quantity and value of milk products sold.

(5) A record of wastage or loss of milk or butter fat.

(6) A record of the items of the spread or handling expenses and profit or loss represented by the difference between the price paid and the price received for all milk.

(7) Such other records and information as the commission may deem necessary for the proper enforcement of this chapter.

501.11 Reports by licensees.—Each licensee and permittee shall, from time to time as required by rule or

order of the commission, make and file a verified report on forms prescribed by the commission of all matters on account of which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose and intent of this chapter. Such report shall cover a period of time specified in the order.

501.13 Order by commission fixing price of milk.—

(1) The commission shall ascertain by such investigation and proofs as the emergency permits and requires what prices for milk in the several localities and markets of the state and under varying conditions will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, having special regard to the health and welfare of children, and be most to the public interest.

In determining prices to be paid producers, the commission shall take into consideration all conditions affecting the milk industry, including the amount necessary to yield a reasonable return to the producer. In determining what is a reasonable return to the producer the commission shall take into consideration the necessary cost incurred in that particular locality in maintaining dairy animals in a healthy condition, paying wages and supplying working conditions to employees sufficient for their subsistence at levels generally obtaining, and for the safeguarding of their health in defraying the ordinary fixed charges and operating expense incidental to the ownership, control and management of a herd of average numerical size, including a reasonable amount representing annual rent of land and equipment necessarily utilized therein and in addition to afford such producers a reasonable return in excess of their cost of production.

and the volume of milk that might reasonably be expected to be produced by that average herd, and the average standard of its butterfat or milk fat content.

In fixing prices to be paid producers under this chapter, the commission may make them subject to adjustment up or down on account of butterfat or milk fat content in excess of or less than the standard determined by the commission to be average.

Each order of the commission fixing any price to be paid producers for whole fresh liquid milk may be static until further order or may provide that any of the respective prices thereby fixed shall fluctuate as provided therein based upon any reasonably related and ascertainable standard, such as an economical index based upon any set of reliable economical or agricultural statistics reasonably determined by the commission to be appropriately related to milk marketing.

In fixing minimum prices to be paid producers under this chapter for their milk utilized as whole fresh liquid milk the commission shall take into consideration the reasonable return, determined as aforesaid, and the average production volume, determined as aforesaid, and may take into consideration any additional volume of milk that may reasonably be required to be produced in order to provide the volume of milk utilized in such manner.

In fixing the prices to be paid producers for that portion of their milk utilized as whole fresh liquid milk the commission shall take into consideration the factors enumerated hereinabove. In fixing the minimum prices to be paid producers for the remainder of the milk produced by them the commission shall establish [2230] prices therefor not to exceed the market value in Florida of the

component parts thereof. Each order of the commission fixing prices for milk may be static as to any or all of such prices so fixed until further order or may provide that any of the respective prices fixed thereby shall fluctuate as provided therein based upon any reasonably related and ascertainable standard, such as the Chicago butter or other recognized commodity market, with due allowance made for cost of transportation from such market to the market in Florida.

In determining wholesale and retail prices to be paid to or charged by milk dealers, the commission shall take into consideration all conditions affecting the milk industry including the amount necessary to yield a reasonable return to the milk dealer. In determining the reasonable return to the milk dealer, the commission shall take into consideration reasonable average operating expense in processing, storage, transportation and delivery charges and all necessary reasonable expenses connected therewith.

Whole fresh liquid milk, as used herein, includes all fluid milk or milk products sold in fluid form, including, but not limited to, skim milk or fortified skim milk.

(2) The commission after making such investigation shall fix by official order the minimum wholesale and retail prices and may fix by official order the maximum wholesale and retail prices to be charged for milk handled within the state for fluid consumption, and wheresoever produced, including the following classes:

(a) By milk dealers to consumers.

(b) By milk dealers to stores either for consumption on the premises or resale to consumers.

(c) By stores to consumers for consumption on the premises where sold.

(d) By stores to consumers for consumption off the premises where sold.

(e) When, pursuant to statute, regulations adopted thereunder or ordinances, various grades of milk are specified, the commission shall fix the minimum price and may fix the maximum price applicable to each in each of the foregoing classes. Orders fixing minimum and maximum prices may vary in different markets and shall designate the markets to which applicable. In construing this section it shall be done taking into consideration for fixing the price, the healthfulness and grade of milk produced and whether or not the sale price gives a fair return to the producer.

(3) It is the intent of the legislature that the public emergency requires that the producers and milk dealers receive a fair return for their products. To that end, if the commission after investigation made either upon its own initiative or upon complaint of a representative group of producers supplying a particular dealer shall determine that such milk dealer purchasing milk from the producers or from or through a cooperative corporation of producers organized under the laws of the state in making such purchases has failed to give fair and reasonable effect to such intent, the commission shall upon due notice and after hearing suspend or revoke the license or permit of the milk dealer so offending and, in addition thereto, a violation of this subdivision shall render such offending milk dealer subject to the provisions of §501.08.

(4) The commission after making such investigation either on its own initiative or on complaint of a repre-

sentative group of producers supplying a particular dealer or a particular market may fix by official order the prices to be paid by milk dealers to producers and others for milk and its various grades and uses. The order of the commission with respect to the prices to be paid to the producers and others shall apply to the locality or zone in which the milk is produced, the market or markets in which the milk so produced is sold, and may vary in different localities or markets according to varying uses and different conditions. Each order may classify milk by forms, classes, grades or uses as the commission may deem advisable and may specify the price therefor. A violation of this subdivision shall render such persons offending this chapter specifically subject to the provisions of §501.08.

(5) After the commission has fixed prices to be charged or paid for milk whether by class, grade or use, it is unlawful for a milk dealer to sell or buy or offer to sell or buy milk at any price less or more than such price or prices as shall be applicable to the particular transaction and no method or device shall be lawful whereby milk is bought or sold or offered to be bought or sold at a price less or more than such price or prices as shall be applicable to the particular transaction, whether by any discount, or rebate or free service, or advertising allowance or a combined price for such milk together with another commodity or commodities, or service or services, which is less or more than the aggregate of the prices for milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise.

(6) Any offender against the matters and things set forth in the foregoing paragraph shall be guilty of a misdemeanor and punished as provided by §501.23. It is

unlawful for any person to knowingly aid, encourage or abet any violation of this chapter or any order of this commission whatsover, or by the use of any advertising method of any character or description whatever on pain of being punished as for a misdemeanor and being subject to being temporarily enjoined by a court of equity without notice and without the furnishing or giving of any bond by the commission.

(7) The commission may upon its own motion or upon application from time to time, alter, revise or amend an official order thereto- [2231] fore made with respect to the prices to be charged or paid for milk. After making such investigation and before making, revising or amending any order fixing the price to be charged or paid for milk, the commission shall give a hearing thereon to all parties interested upon reasonable notice to such interested parties and to the public of such hearing in such newspaper or newspapers as in the judgment of the commission shall afford sufficient notice and publicity. Such order of the commission may be reviewed by appeal as provided in this chapter at the instance of any aggrieved person appearing of record at the hearing either in person or by personal representative and opposing the making of the order.

(8) It is the intent of the legislature that the instant, whenever that may be, that the handling within the state by a milk dealer of milk produced outside of the state becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this chapter respecting such milk so produced shall apply and the powers conferred by this chapter on the commission shall attach. After any milk so produced comes to rest within the state, any sale, within the state by a licensed milk dealer required by this chapter to be li-

censed, or any milk purchased from the producer at a price lower than that required to be paid for milk produced within the state purchased under similar conditions is unlawful.

501.14 Collective sales by cooperative corporations.—It is the intent of the legislature that no provision of this chapter shall prevent, and no provision contained in this chapter shall be deemed or construed to prevent a cooperative corporation, organized and operated under or subject to the provisions of chapter 618, and engaged in making collective sales or marketing of milk for the producers thereof, from blending the net proceeds of all its sales in various classes and whether in fluid form or as manufactured products, both within and without the state, and paying its producers such blended price without such deductions or differentials as may be authorized under contract between such corporation and its producers, or from making collective sales of the milk of its members or other producers represented by it, at a blended price based upon sales thereof in various classes, and whether in fluid form or manufactured products, both within and without the state, and which price is to be paid either directly to producers or to the cooperative corporation. Nothing contained in this chapter shall prevent any milk dealer from contracting for his milk with such cooperative corporation upon such basis. Also no provision of this chapter shall be deemed or construed to affect the contracts of such a cooperative corporation with its producers nor to affect or abridge the rights and powers of such a corporation conferred by the provisions of such chapter or any of its operations thereunder, except as in this chapter otherwise provided.

501.15 Interstate and federal compacts.—The commission may confer with legally constituted authorities of

other states of the United States, with respect to a uniform milk control within the state or as between states, and may enter into a compact or compacts for uniform milk control subject to such federal approval as may be required by law.

501.16 Audits and reports to governor and legislature.—The commission shall have its books and records audited annually by the state auditor or a private auditor and make a full report of its proceedings, including said audit, to the governor and the chairman of the finance committee of the senate and the finance committee of the house, annually.

501.17 Divulging of information by commission members, etc., forbidden; penalty.—No member of said commission, nor any officer, agent or employee thereof, shall divulge to any person the contents of any document, paper or record examined by him in the performance of his duties hereunder, or any information obtained by him in the course of his investigations, except as may be required to carry out the purposes of this chapter. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding one year.

501.18 Law declared not applicable to interstate commerce.—No provision of this chapter shall apply or be construed to apply to foreign or interstate commerce except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto.

501.19 Owner of three cows or less exempt.—Any producer of milk that owns, controls or milks three cows

or less shall not be subject to pay the license fee, but shall come under the milk price provision.

501.20 Exercise and withdrawal of exercise of supervisory and regulatory powers in markets.—

(1) The commission shall not supervise and regulate any market in the state which it does not now supervise and regulate, or from which the exercise of its supervisory and regulatory powers is hereafter withdrawn unless there is presented to it a written petition signed by not [2232] less than ten per cent in number of the producers and producer-distributors in such market, and representing not less than fifty per cent of the distributors buying milk from the base earned producers in such market, requesting it to exercise its supervisory and regulatory powers therein and unless, in a secret ballot election, to be called by the commission as promptly as reasonably possible after the presentation to it of such petition, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the exercise by the commission of its supervisory and regulatory powers in such market. If in the election such majority in number vote in favor thereof, the commission shall supervise and regulate such market, but otherwise shall not do so.

(2) Whenever there is presented to the commission a written petition signed by not less than ten per cent in number of the producers and producer-distributors in any market in the state over which the commission is exercising its supervisory and regulatory powers, pursuant to this chapter requesting the commission to withdraw the exercise of such powers from such market, there shall be called by the commission, as promptly as reasonably possible after the presentation to it of such

petition, a secret ballot election among the producers and the producer-distributors in that market. In the event, in such election, a majority in number of the producers and producer-distributors eligible to vote in such election vote in favor of the withdrawal therefrom by the commission of the exercise of its supervisory and regulatory powers, the commission shall withdraw the exercise of such powers by it from such market, but otherwise shall not do so.

(3) The commission shall prescribe the procedure to be followed in calling, holding, conducting and ascertaining the results of the elections provided for herein and may adopt reasonable rules, regulations and orders in regard thereto, but it shall insure that any election held hereunder is held by secret ballot, and that all those entitled to vote therein are given reasonable notice of the time and place of such election and reasonable opportunity to vote therein, provided, however, that the commission shall appoint a person or firm not a producer, producer-distributor or distributor or the commission or any member or employee thereof to conduct any such election called under the provisions of this section. Expenses of calling, holding, conducting and ascertaining the results of any such election shall be paid by the commission. The person or firm so appointed shall certify the results of the election to the commission promptly after such election is held.

The commission may schedule one election at one time and one place but in no event shall an election be held less than six months following an election; if, because of the size of the market involved, or for other reasons, the commission deems it advisable so to do for the convenience of those entitled to vote in such election, it may hold such election at more than one place within

such market, and may designate different times and places within such market at which voting may be done. However, none of the votes shall be canvassed, nor shall any information concerning them be given or disseminated to anyone by the person or firm appointed to conduct the election, until all times fixed for holding such election have elapsed. In the event that any election is conducted at more than one location only one ballot box shall be used by the person or firm appointed by the commission.

(4) Determinations respecting numbers of producers and producer-distributors in any market shall all be made by the commission as of the end of the second calendar month preceding the month in which an election hereunder is called. All persons who were producers or producer-distributors in such market at the end of such second preceding calendar month shall be entitled to sign any such petition, and to vote in any election called hereunder, and shall be counted, regardless whether at the time of signing any such petition, or of its presentation, or of any election held hereunder, they are producers or producer-distributors in the market. Any who were not at the end of such second preceding calendar month producers or producer-distributors in the market shall not be counted in number, in determining the results of any election held hereunder, and shall be eligible neither to sign any such petition nor to vote in any such election, even though they may become producers or producer-distributors in such market after the end of such second preceding calendar month.

The number of producers and producer-distributors voting in the election shall be determined by the commission. In making such determination, the commission may obtain information from all available sources, including, but not limited to, its own records and reports,

the books and records of producers in the market, and the books and records of producer-distributors and distributors in the market, whether such books and records are kept, or are available, within or without the geographical limits of the market. It shall make all such determinations as promptly as reasonably possible and with as much accuracy as is reasonably possible in order to make such determinations without undue delay, and its decisions in regard thereto shall be final.

(5) Whenever, under this section, the commission shall commence exercising, or withdraw the exercise of, its supervisory and regulatory powers in any market, it shall do so by order, and the time when such commencement or such withdrawal shall be effective shall be the date when the results of any election conducted under the provisions of this section are filed with the commission by the person or firm authorized to conduct such election.

[2233] **501.21 Duration of commission.**—A continuing emergency for the regulation of the business and industry herein named shall be presumed and deemed continuing and existing, calling for the need for the existence of this chapter, and the same shall be effective until such date as it is repealed or amended by some subsequent act of the legislature whenever any such continued emergency may be deemed essential to the continued validity of any of the provisions hereof.

501.23 Penalty for violations.—A violation of any provision of this chapter or of any rule or order of the commission lawfully made, except as otherwise expressly provided by this chapter, shall be a misdemeanor punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, and each day during which such violation shall continue shall be deemed a separate violation.